THE HONBLE SRI JUSTICE GODA RAGHURAM

W.P.No.18337 of 2006

Date 04.09.2006

Between:
M/s.Roll on containers & another.

.....
PETITIONERS

AND

M/s.Andhra Pradesh Foods.

.....RESPONDENT

THE HONBLE SRI JUSTICE GODA RAGHURAM

W.P.No.18337 of 2006

ORAL ORDER:

In this writ petition, what is assailed is the condition insisted by the respondent of requiring furnishing of a demand draft or a bank guarantee towards security, from a Nationalized Bank in respect of a tender notification issued by the respondent for supply of sugar and other essential commodities.

Petitioners claim to be manufacturers of commodities for which tenders were solicited by the respondent. They state that their moneys are parked in co-operative and scheduled banks and not in nationalized banks. On this factual assertion, the petitioners plead that the insistence of a demand draft or a bank guarantee being drawn only on a nationalized bank is onerous and the respondent should be mandamised to accept a demand draft or a bank guarantee drawn on a scheduled bank or a co-operative bank.

Onerous conditions are not necessarily unconstitutional or illegal conditions. The respondent as the authority or agency soliciting bids for supply of sugar and essential commodities is endowed with a spectrum of discretion to formulate terms and conditions for submission of the bids. Within such discretion the respondent has decided to incorporate a term that the demand draft or bank guarantee [towards performance of the contract as and when entered into] should be drawn on a nationalized bank. Such a term or a condition of the tender notification is one within the legitimate spectrum of the respondent's discretion, which is not

perverse or *per se* illegal. It violates no law nor is it established to be a perverse or a wholly arbitrary term.

The onerous impact on the petitioners is *per se* not a ground warranting judicial review. There are no merits in the writ petition. It is accordingly dismissed. No order as to costs.

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04-09-2006

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